

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EVELYN J. MOREY

Claimant

VS.

VIA CHRISTI HEALTH SYSTEM

Respondent

Self-Insured

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Docket No. 1,027,871

ORDER

Claimant appeals the April 26, 2006 preliminary hearing Order of Administrative Law Judge Kenneth J. Hursh. Claimant was denied the requested benefits after the Administrative Law Judge (ALJ) determined the benefits, specifically the home care as recommended by Mike Zafuta, M.D., did not constitute medical treatment.

ISSUES

1. Did the ALJ err in finding that the home care ordered by the authorized treating physician did not fit the definition of medical treatment as contemplated by the Kansas Workers Compensation Act?
2. Does the Appeals Board (Board) have jurisdiction to consider this matter on appeal from a preliminary hearing?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds the Order of the ALJ should be reversed to award claimant assistance for her personal hygiene, but affirmed with regard to the requested housekeeping services.

Claimant suffered a compensable accidental injury on April 5, 2005, when she slipped and fell in respondent's parking lot and broke her right arm. Medical treatment was authorized with orthopedic surgeon Mike Zafuta, M.D. Claimant was in the hospital for approximately four weeks after the injury. Upon release, claimant was provided home assistance on a temporary basis by respondent, until claimant was found to be at maximum medical improvement.

Claimant requests continued home care for basic hygiene and grooming tasks, and for household chores such as vacuuming and cleaning. Respondent contends these activities do not constitute medical treatment as set forth in K.S.A. 2004 Supp. 44-510h(a). The ALJ agreed with respondent, finding these "housekeeping services" were not "medical treatment."¹

The Board must first decide whether it has the jurisdiction to consider this matter.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accidental injury?
4. Is there any defense that goes to the compensability of the claim?²

Under the language of K.S.A. 44-534a, the Board would not have the jurisdiction to determine a claimant's need for medical treatment. However, the Kansas Court of Appeals, in *Hedrick*,³ determined the issue of what constitutes medical treatment is an issue over which the Board would have jurisdiction on appeal from a preliminary hearing order. The Board can, therefore, review the ALJ's determination whether the home care requested by claimant constitutes medical care.

This issue is one over which the Board has taken jurisdiction in the past. In *Vann*,⁴ the Board determined that K.S.A. 44-510(a) (which was the predecessor to K.S.A. 2004 Supp. 44-510h(a)) does not include cleaning services under the definition of "medical treatment." In following its earlier decision, the Board finds the cleaning services for claimant's home do not constitute medical care.

¹ Preliminary hearing Order at 1 (April 26, 2006).

² K.S.A. 44-534a(a)(2).

³ *Hedrick v. U.S.D. No. 259*, 23 Kan. App 2d 783, 935 P.2d 1083 (1997).

⁴ *Vann v. State of Kansas*, No. 189,857, 2000 WL 1277581 (Kan. WCAB Aug. 31, 2000).

However, as noted in *Hedrick*,⁵ the term “medical treatment” was not defined by the legislature. There are specific items contained in K.S.A. 44-510h which constitute medical treatment. Suffice it to say the requested service must be “reasonably necessary to cure and relieve the employee from the effects of the injury.”⁶

Here, claimant’s requested assistance also includes help with personal hygiene such as washing her hair and assisting claimant with her bath. The Board finds personal hygiene would constitute a form of medical treatment, as it is necessary to aid claimant in her continuing health.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth J. Hursh dated April 26, 2006, should be, and is hereby, affirmed with regard to claimant’s request for housekeeping services, but reversed with regard to the requested assistance for personal hygiene such as bathing and washing her hair.

IT IS SO ORDERED.

Dated this ____ day of August, 2006.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Frederick L. Haag, Attorney for Respondent

⁵ *Hedrick*, *supra*, at 785.

⁶ K.S.A. 44-510h(a).